

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

LEVEL ONE TECHNOLOGIES, INC.,)
Plaintiff,)
v.)
PENSKE TRUCK LEASING CO., L.P.,)
and)
PENSKE LOGISTICS LLC,)
Defendants.)
Case No. 4:14-cv-1305-RWS

**DEFENDANTS' MOTION TO EXCLUDE CERTAIN TESTIMONY
OF CRAIG S. ROSENBERG**

Defendants Penske Truck Leasing Co., L.P. and Penske Logistics LLC (collectively, “Penske”), by their undersigned counsel, move this honorable Court to exclude certain testimony of Plaintiff Level One Technologies, Inc.’s (“Level One”) expert witness, Dr. Craig S. Rosenberg. The grounds for this Motion are summarized below and further set forth in the accompanying Memorandum of Law, which is incorporated herein by reference.

1. Level One has identified Dr. Rosenberg to offer opinion testimony concerning, *inter alia*, the number of hours and years Penske would have taken to develop its electronic payment system, POPS, if it had not, as alleged, improperly used knowledge about Level One's payment system, Epay Manager (the "Opinion").

2. Dr. Rosenberg's proposed testimony concerning his Opinion should be excluded because it does not rest on a reliable foundation and Dr. Rosenberg does not utilize a reliable methodology.

3. Dr. Rosenberg's proposed testimony rests on an hours schedule ("Epay Hours") provided by Level One. Level One alleges that the Epay Hours represents the number of hours it spent developing Epay Manager. These hours, however, are based on rank speculation and

include thousands of hours unrelated to Epay Manager development, as well as hours Level One spent on projects other than Epay Manager. Dr. Rosenberg does nothing to verify these numbers and, instead, blindly accepts that the Epay Hours accurately detail Level One's "development time" for Epay Manager. This renders his testimony concerning the Opinion entirely unreliable.

4. Dr. Rosenberg's proposed testimony is also unreliable because his Opinion depends on a comparison of Epay Hours and the hours that Penske spent developing POPS ("POPS Hours"). Because Dr. Rosenberg materially understates the POPS Hours, this hours comparison is not, in fact, reliable.

5. Moreover, the Court should exclude Dr. Rosenberg's testimony concerning the Opinion because Dr. Rosenberg's proposed methodology for the Opinion is unreliable. The proposed methodology does not adhere to the rigors demanded by experts in Dr. Rosenberg's industry. Additionally, Dr. Rosenberg cannot explain why the figures he used in his methodology are appropriate and his methodology is comprised of inapposite comparisons.

6. Finally, Dr. Rosenberg's proposed testimony concerning the Opinion should be excluded because he fails to articulate all the bases and reasons for the Opinion in violation of Federal Rule of Civil Procedure 26(a)(2)(B).

7. Pursuant to Federal Rule of Evidence 702 and *Daubert* and its progeny, Dr. Rosenberg's proposed testimony is entirely speculative and unreliable and should not be admitted into evidence.

WHEREFORE, for these reasons and those set forth in the accompanying memorandum in support, Defendants request that the Court exclude the testimony of Dr. Craig S. Rosenberg concerning the Opinion.

Dated: December 15, 2017

Respectfully submitted,

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By: /s/ Douglas Y. Christian

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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